# Owners and/or other interested parties in the Indian navy ship or vessel INS 'Jyoti' at Bombay's port harbour v Owners and/or other interested parties in the ship or vessel MV 'Yick Wing' registered in the port of Panama

HIGH COURT (JOHOR BAHRU) — ADMIRALTY IN REM NO 27–OF 1998
AZHAR J
15 MARCH 2001

***Shipping and Navigation*** *— Action in rem — Arrest of ship — Security for release of ship, reduction of — Collision, liability disputed — Whether plaintiff entitled to top level award anticipated on basis of reasonably best arguable case — Whether amount of security should be reduced*

A sea collision occurred between a naval tanker INS 'Jyoti' and a merchant vessel MV 'Yick Wing' in the Straits of Malacca. The plaintiffs as the owners and/or persons interested in the said Jyoti who alleged that the said collision was caused solely by the negligence of the defendants, their servants and/or agents, obtained an order of arrest of the ship Yick Wing as a security for the plaintiffs' impending claim against her owners, the defendants in respect of the damage suffered by Jyoti. After negotiation between the parties, the defendants agreed to offer security for the release of Yick Wing and provided a letter of undertaking to the plaintiffs in the sum of US$7,244,479. Following this, Yick Wing was released by the plaintiffs. Subsequently the plaintiffs filed a claim claiming damages for damage suffered by Jyoti and the defendants counterclaimed. The defendants applied inter alia for an order that the letter of undertaking issued to the plaintiffs in the sum of US$7,244,479 be reduced and/or moderated. An amount that had been conceded by the defendants in their submission was the lump sum of US$3,802,497.09. The issue for determination was whether the quantum of security given to the plaintiffs should be reduced.

**Held**, allowing the defendants' application and reducing the amount of security:

(1) Since the issue of liability for the collision had not been adjudicated, the plaintiffs had no right to take the stand and action as though the defendants have been adjudged as the guilty party. A request for security that has to be made must be made reasonably, having regard to the circumstances of the incident and merits of the claim. The bottom line is still reasonableness (see p 559C–D).

(2) The plaintiffs are not entitled to the top level of award which can be anticipated on the basis of their reasonably best arguable case as set out in *The Tribels* as the facts in *The Tribels* are different

from the present case and the liability in *The Tribels* is not disputed whereas the liability in the present case is disputed (see p 559E–G).

(3) The entitlement of the plaintiffs to security was not on the basis of their reasonably best arguable case as the plaintiffs affected the arrest of the defendants' vessel and demanded payment for security for her release solely on the basis of their own belief and assumption that the defendants were the tortfeasors and were guilty of tort against them. As the issue of 'who was right and who was wrong' is yet to be determined in a full trial, the plaintiffs do not have the right to cling on to the security furnished by the defendants (see pp 559H, 560B).

(4) The decision of the defendants to accede to the plaintiffs' demand was purely a private matter and had nothing to do with the court. The court had been asked to interfere only in respect of the quantum. In the circumstances, the quantum of the security was reduced to an amount that had been conceded by the defendants in their submission, ie in the lump sum of US$3,802,497.09 (see p 560D–E).

**[Bahasa Malaysia summary**

Satu perlanggaran di lautan berlaku antara satu kapal tangki tentera laut INS 'Jyoti' dan satu kapal dagang MV 'Yick Wing' di Selat Melaka. Plaintif-plaintif sebagai pemilik dan/atau orang yang berkepentingan dalam Jyoti tersebut yang mengatakan bahawa perlanggaran tersebut disebabkan oleh kecuaian defendan-defendan, pekerja-pekerja dan/atau ejen-ejen mereka, telah mendapatkan satu perintah penangkapan kapal Yick Wing tersebut sebagai jaminan untuk tuntutan mendatang daripada plaintif-plaintif terhadap pemilik-pemiliknya, defendan-defendan berhubung dengan kerosakan yang dialami oleh Jyoti. Selepas perundingan antara pihak-pihak tersebut, defendan-defendan tersebut bersetuju untuk menawarkan jaminan untuk pelepasan Yick Wing dan memberikan sepucuk surat akuan sumpah kepada plaintif-plaintif berjumlah US$7,244,479. Berikutan ini, Yick Wing telah dilepaskan oleh plaintif-plaintif. Kemudiannya plaintif-plaintif telah memfailkan satu tuntutan menuntut ganti rugi untuk kerosakan yang dialami oleh Jyoti dan defendan-defendan telah membuat tuntutan balas. Defendan-defendan telah memohon, antara lain, satu perintah bahawa surat akuan sumpah tersebut yang dikeluarkan kepada plaintif-plaintif dalam jumlah US$7,244,479 dikurangkan dan/atau disederhanakan. Satu jumlah yang telah diakui oleh defendan-defendan dalam penghujahan mereka adalah jumlah sekaligus US$3,802,497.09. Persoalan untuk ditentukan adalah sama ada kuantum jaminan yang diberikan kepada plaintif-plaintif patut dikurangkan.

**Diputuskan**, membenarkan permohonan defendan-defendan dan mengurangkan jumlah jaminan:

(1) Memandangkan persoalan liabiliti untuk perlanggaran tersebut belum diputuskan, plaintif-plaintif tidak mempunyai apa-apa hak untuk membuat penyataan teguh dan tindakan tersebut seolah-olah defendan-defendan telah dihukum sebagai pihak bersalah. Satu permintaan jaminan bahawa ia perlu dibuat mestilah dibuat mengikut budi bicara, dengan mengambil kira keadaan-keadaan kejadian tersebut dan merit tuntutan tersebut. Pertimbangan utama masih adalah kemunasabahan (lihat ms 559C–D).

(2) Plaintif-plaintif tidak berhak terhadap award peringkat tertinggi yang boleh dijangkakan atas dasar kes mereka munasabah yang terbaik yang boleh dihujahkan sebagaimana yang dinyatakan dalam *The Tribels* kerana fakta-fakta dalam *The Tribels* adalah berbeza dariapda kes sekarang ini dan liabiliti dalam *The Tribels* tidak dipertikaikan sementara liabiliti di dalam kes sekarang ini adalah dipertikaikan (lihat ms 559E–G).

(3) Hak plaintif-plaintif terhadap jaminan tersebut bukan berdasarkan kes munasabah mereka yang terbaik yang boleh dihujahkan kerana plaintif-plaintif telah mengadakan tangkapan kapal defendan-defendan tersebut dan menuntut bayaran untuk jaminan sebagai pelepasannya semata-mata atas dasar kepercayaan dan tanggapan mereka sendiri bahawa defendan-defendan adalah pelaku-pelaku tort dan bersalah terhadap mereka. Memandangkan persoalan 'siapa betul dan siapa salah' masih belum ditentukan dalam perbicaraan penuh, plaintif-plaintif tidak mempunyai hak untuk bergantung kepada jaminan yang diberikan oleh defendan-defendan tersebut (lihat ms 559H, 560B).

(4) Keputusan defendan-defendan untuk bersetuju dengan tuntutan plaintif-plaintif adalah satu perkara yang sulit semata-mata dan tidak mempunyai apa-apa kaitan dengan mahkamah. Mahkamah telah diminta untuk campur tangan hanya berhubung aspek kuantum. Dalam keadaan berikut, kuantum jaminan tersebut dikurangkan kepada satu jumlah yang telah diakui oleh defendan-defendan di dalam penghujahan mereka, iaitu jumlah sekaligus US$3,802,497.09 (lihat ms 560D–E).]

**Notes**

For cases on arrest of ship, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 804–805.

**Cases referred to**

*'Charlotte', The* [1920] P 33 (refd)
*'Chekiang', The* [1926] AC 637 (refd)
*H 156, The* [1999] 3 SLR 756 (refd)

*'Moschanty', The* [1971] 1 Lloyd's Rep 37 (refd)
*'Polo 11', The* [1977] 2 Lloyd's Rep 115 (refd)
*'Susquehanna,' The* [1926] AC 655 (refd)
*'Tribels', The* [1985] 1 Lloyds Rep 128 (refd)

*Ahalya Mahendra* (*Mahendra & Co*) for the plaintiffs.
*Jainil Bhandari* (*Lee Ong & Kandiah*) for the defendants.

**Azhar J:.** As an aftermath of a sea collision between a naval tanker, INS Jyoti, and a merchant vessel, MV Yick Wing, in the Straits of Melaka on 1 November 1998, the plaintiff, as the owners and/or persons interested in the said Jyoti who alleged that the said collision was caused solely by the negligence of the defendants, their servants and/or agents, obtained an order of arrest of the ship Yick Wing that was docked at Johor Port at the material time. The said vessel was arrested as a security for the plaintiff's impending claim against her owners, the defendants, in respect of the damage suffered by Jyoti.

After some communications and negotiations between the parties, the defendants agreed in principle to offer security on a 'without prejudice' basis for the release of Yick Wing from detention. As demanded by the plaintiffs, the defendants provided to the plaintiffs a letter of undertaking issued by the Britannia Steamship Insurance Assoc Ltd in the sum of US$7,244,479. Following this, Yick Wing was released by the plaintiffs. Subsequently, the plaintiffs filed a claim in this court claiming damages for the damage suffer by Jyoti.

In the meantime, the defendants took out a summons in chambers applying, inter alia, for an order 'that the letter of undertaking issued by the Britannia Steam Ship Insurance Assoc Ltd to the plaintiffs for and on behalf of the defendants, in the sum of RM7,244,479 be reduced and/or moderated to the sum of US$1,802,500, or alternatively US$3,624,100, or alternatively to such other sum as this honourable court deems fit'

The plaintiffs set out a breakdown of the security demanded originally as follows:

| | | | |
|---|---|---|---|
| (a) | Repair costs (estimate) | – | US$2,325,585.00 |
| (b) | Hiring of tugs for towing Jyoti to mainland | – | US$ 155,400.00 |
| (c) | Hiring of tanker for 5 months to meet tanker requirement of Navy at rate of US $14,000.00 per day | – | US$2,100,000.00 |
| (d) | Costs of contaminated oil/oil lost at sea = 2,600 tons of High Speed Diesel at US$200.00 per ton | – | US$ 520,000.00 |
| (e) | Lump sum legal expenses and living of marine surveyors | – | US$ 16,500.00 |
| | TOTAL | | US$5,117,485.00 |

Over and above the above mentioned figure, there were also two other items on the plaintiffs' claim, namely:

| | | | | |
|---|---|---|---|---|
| (i) | interest thereon at 8%pa for five years | – | US$2,046,994.00 | |
| (ii) | Provision for legal costs (for full trial) | – | US$ | 80,000.00 |

However, upon concession made by the defendants with regard to certain items in the above claim, this court is left with the task of determining the issue of reasonableness in respect of items (a), (b), (c) and the provision for legal costs which has been revised upwards by the plaintiffs.

For the defendants, it was submitted that in law they are not obliged to provide security for the plaintiffs' claim exceeding the full value of the arrested vessel. As for Yick Wing, the defendants came up with a figure of US$1,802,500 which represented the value of the vessel in its damaged state. Apparently this amount is derived after taking into account the costs of repair and loss of use of the vessel for 45 days.

Reference was made to an English Court's decision in *'The Charlotte'* [1920] P 33 where it was held that if the right of limitation (of security) is not admitted, the plaintiffs are entitled to demand bail up to the full value of the rest if the amount of their claim and costs equal or exceeds that amount.

In the instant case, the value of Yick Wing was deposed in the affidavit evidence of Christopher A Jones from Sampson, Spencer & Young, international shipbrokers and valuers who were hired by the defendants to examine the vessel after the collision and prepare a report of value. It was further submitted that the plaintiffs having failed to put in their own report of value of Yick Wing must accept the defendant's report of value as exh 'KFY–3' in the defendant's affidavit deposed by Kong Fat Yan at lampiran 16.

It was also submitted that if the plaintiffs disputed the defendants' valuation of Yick Wing and at the same time did not have their own valuation report, they should have applied to the court for an order of appraisement of the vessel. Having failed to take the said action, the plaintiffs must concede to the report procured by the defendants.

By way of an alternative submission on this issue, it was also proposed for the defendants that if this court was not minded to accept the value of the vessel at its damaged state, thus the value of the vessel immediately before the collision should be considered as the appropriate value of security for the plaintiffs' claim. The defendants' valuers estimated the value of Yick Wing in its undamaged state as US$4,250,000.

The defendants urged that the security should be scaled down to that figure.

Alternatively, it was argued for the defendants that in law the plaintiffs are entitled to security in respect of their claims on the basis of their

reasonably best arguable case. As such, the plaintiffs must explain to the defendants the basis of their claims to enable the court to determine the merits and reasonableness of such claims.

In support of this proposition, this court's attention is drawn to the English Court's decision in *The 'Moschanty'* [1971] 1 Lloyd's Rep 37 and *The 'Polo 11'* [1977] 2 Lloyd's Rep 115 and the Singapore High Court's decision in *The H 156*[1999] 3 SLR 756. Central to the decisions in all the three cases was the issue of reasonableness in the amount of security demanded by the claimants. In *The H 156* it was held that a party which arrested a vessel must act expeditiously. He must act in good faith and provide full and frank information in an organized form to enable the court to exercise its discretionary power on a legal and reasonable basis. It was further held that the plaintiff in making their demand for security must furnish a realistic figure and not an imaginative one plucked out of the air. Lastly, the plaintiff's quantification of their losses which formed the basis of their demand for security was held to be unsustainable as they failed to state how the 'loss of profit' and 'loss of market share' figures had been calculated.

In the instant case the principle of 'reasonably best arguable case' encompasses the following heading of the plaintiff's claim:

(i) permanent repairs;

(ii) costs of towage and cost of temporary repairs;

(iii) loss of use;

(iv) costs of hiring replacement vessels;

(v) general damages;

(vi) legal costs.

All the abovementioned heads, except for head No (iv) are subject to heavy dispute by the defendants.

Going by the principle in *The H 156* it was submitted for the defendants that the court was under a duty to examine each head of the plaintiff's claim in order to determine if it was unreasonable or oppressive.

As regards head (i), counsel for the defendant argued that at the time of filing this application on 10 June 1999, permanent repairs had not been completed. Upon completion of the said repairs on or about 26 October 1999 the actual costs have now been ascertained, ie US$1,526,641.29 as evidenced by the repair bill exhibited as 'RS1–10' in Captain Rajeev Sawhney's affidavit (encl 18A).

In the circumstances, this head of claim must be moderated to the actual costs of repairs.

As regards head (ii), the defendants said that the plaintiffs had failed to demonstrate the necessity of towing Jyoti from Port Blair to Visakhapatnam (a journey of about 660 miles), when earlier on she had managed to sail on her own steam from Port Dickson to Port Blair (a journey of about 795 miles) without any difficulties.

Quite apart from this, the defendants also complained about the towing bill that was alleged to be excessive as exhibited in 'RS–9' encl 18A.

As regards head (iii) which comprised the actual costs of hire of replacement vessels and general damages for loss of use, the defendants assert that the plaintiffs have failed to furnish them with the breakdown and the particulars of the claim. Once again the defendants insist that the plaintiffs who have all the information regarding their claim must put their cards on the table for scrutiny.

However, for the purposes of the instant application, the defendants made a concession that the plaintiffs were entitled to security for the actual hire of the replacement vessels. That leaves us with general damages for loss of use. In this regard, it was argued for the defendant that the plaintiffs were under a duty to show sufficient evidence and material for the court to assess if their demand for security was reasonable and not excessive and oppressive. For this proposition the defendants referred to *'The Susquehanna'* where the House of Lords stated that general damages was to be calculated based on such rates of interest and depreciation as the evidence may justify. It was further argued that the plaintiffs' computation of general damages which was stated to be US$2,425,882.97 was not supported by independent evidence for the applicable rates of interest and depreciation in this case. It was also urged that the so-called 'professional opinion' of Captain Sawhney on this subject was not to be admitted as evidence as he was only a director of naval operation of the Indian Navy and not a shipbroker or valuer or surveyor or accountant who would be better qualified to state their opinion on this matter.

The defendants also stated their objection to the plaintiffs' inclusion of the officers' and crews' allowances in their computation of general damages.

By reasons of the plaintiffs' failure to rationalize and provide explanation and details of their claim, the security asked for under this head should be limited only to the actual costs of hire of the replacement vessels 'Jai Narayanan Vyas' and 'MT Arubindo'.

The defendants' last bone of contention under this head is the number of days, ie 320 days claimed for loss of use. The defendants said it was excessive and unreasonable. It was submitted that there was a tremendous delay in the commencement of the repair work after Jyoti's arrival at Visakhapatnam. It started eight months later and took almost a year from the date of collision for the repairs to be completed; whereas according to the defendants' surveyor, the whole process of repairs should not take more than two months.

Finally, as regards the legal costs, the defendants say that the upwards revision of the legal costs from the original figure of US$80,000 to US$400,000 was exorbitant and therefore unacceptable. The defendants further proposed a sum in the region of US$80,000 to US$100,000 as a realistic and reasonable figure under this head:

In conclusion, the defendants summarized and lumped their proposition of acceptable and reasonable security as follows:

| | | | |
|---|---|---|---|
| (a) | Principal claim | – | US$2,658,926.49 |
| (b) | Interest at 8% for five years | – | US$1,063,570.60 |
| (c) | Provision for legal costs | – | US$ 80,000.00 |
| | Total | | US$3,802,497.09 |

Having summarized and highlighted the defendants' objection and arguments in this application. I will now move on to the plaintiffs' replies and justification in holding on to the security currently held by them.

At the outset of these proceedings, the question of jurisdiction of this court to adjudicate on the application was about to be raised by counsel for the plaintiffs. However, this issue has, to a certain extent, been ironed out. Nevertheless, there still remained the insistence of the plaintiffs that the court had the power to vary the terms of the letter of undertaking only if there had been an abuse of the process of the court by the plaintiff in affecting the arrest on the vessel. If it was not proven that the plaintiffs had been guilty of abusing the process of the court, then the court should not interfere or vary what has been privately agreed by the parties in the said letter of undertaking.

In this regard, it was further submitted that the defendants, by their own conduct, are deemed to have agreed with all the terms of the letter of undertaking. It was alleged that the defendants did not, at the time of issuing the letter of undertaking, protest or dispute the quantum of the security and gave no indication to the plaintiffs of their intention to apply to have the security reduced later on.

In the circumstances, the defendants should be precluded from raising the issue of quantum that had been agreed by them.

Quite akin to this this issue was the question of valuation of Yick Wing which the defendants contended that the plaintiffs were bound by the defendants' valuation report as the plaintiffs had failed to come up with their own. The plaintiffs alleged that as the defendants did not hint to them any of the latter's intention to have the security reduced, they did not see any need to have Yick Wing examined by their own valuers for a valuation report. It was further contended that the defendants' valuation report of Yick Wing was only supplied after repairs had been completed ans the vessel had left the Sembawang dock, thus giving no opportunity for the plaintiffs to conduct their own survey of the condition of Yick Wing in its damaged state.

It was further alleged that the defendants had given the plaintiffs limited access to Yick Wing to enable the latter to conduct their own survey. As such, this deprivation of opportunity caused great injustice to the plaintiffs.

As for the defendants valuation of Yick Wing which is found in their affidavit of value, the plaintiffs said that it lacked credibility, and should therefore be disregarded. No specific reason is given for this proposition. So much for the first ground of the defendants' application.

A As an alternative to the above submissions and relying on the English authority of *'The Tribels'* [1985] 1 Lloyds Rep 128, it was submitted for the plaintiffs that they were entitled to demand security for such amount as will secure payment to them of the top level of award which can be anticipated on the basis of their reasonably arguable best case together with interest thereon and the costs of litigation and an appeal thereof.

B Apparently, parties are on common ground with regards to the manner in determining the issue of reasonableness/oppressiveness, ie be examining each head of the plaintiffs' claim.

On the costs of towage and in reply to the defendants' query as to the necessity of towing Jyoti from Port Blair to Visakhapatnam, the plaintiffs C said that it was the prerogative and responsibility of the Indian Navy to see and ensure that the vessel was safe during the passage across the Bay of Bengal. The sea worthiness condition of the vessel, the risk of encountering bad weather and the need to safeguard the Indian Navy's reputation, should anything happen to the vessel, are the factors that prompted the plaintiffs to have Jyoti towed to Visakhapatnam to undergo repairs at the Hindustan D Shipyard.

As to the defendants' assertion that towing of Jyoti was not necessary in view of their surveyor report, the plaintiff urged that such report should be ignored as the said surveyor did not have professional experience in dealing with casualties involving naval vessels from the plaintiff's jurisdiction or E knowledge of the procedures and requirement of both the plaintiffs' naval forces and the plaintiffs' government.

It was further asserted that the defendants' surveyor's report was not applicable and therefore inadmissible as it was only relevant to commercial vessels.

F Similarly, as for the loss of use, the plaintiffs took the stand that as the defendants did not question the former's request for security for the loss of use, the latter should not raise the issue now. What the plaintiffs were trying to say was that the defendants were deemed to have agreed to pay the amount requested by the plaintiffs under this head.

G Alternatively, it was submitted that the plaintiffs were under no legal obligation to provide and supply the defendants information and evidence pertaining to the former's claim, as by doing so, the plaintiffs' subsequent action would be jeopardized.

Under the head of general damages, the plaintiffs submit that their claim under this must necessarily include pay and allowance of the crew, for H loss of use of the Jyoti. This proposition was based on the decision of the House of Lords in *The 'Chekiang'* [1926] AC 637 and *The 'Susquehanna'* [1926] AC 655.

Picking up from the decision in the two cases, it was further submitted that even though the Jyoti was not the kind of vessel that traded for profit, it did not mean that the plaintiffs were not entitled to compensation for the I damage caused to her by the defendants. It was further submitted that the plaintiffs were entitled to interest calculated in accordance with the principle stated in *The 'Chekiang'* and *The 'Susquehana'*. The professional

opinion of Captain Rajeev Sawhney on this matter should be accepted as the defendants had failed to put up evidence to counter such opinion.

It was further submitted that the opinion of Captain Sawhney was more relevant than that of the shipbroker, valuer or surveyor as suggested by the defendants as the character of the Jyoti and the nature of her duties were different from that of ordinary commercial or merchant vessels.

The last issue under this head was the period of loss of use. The plaintiffs said that 320 days were taken to carry out permanent repairs on Jyoti because of two factors. Factor number one was the unavailability of high tensile strength steel locally. It took them three months to have this special kind of steel imported from Germany to Visakhapatnam.

The second factor was the unavailability of a dry dock at the time when Jyoti was scheduled to start its repair work.

Lastly was the issue of legal costs. It was the contention of the plaintiffs that the initial estimate of the legal costs was made before repairs on Jyoti was carried out. However, by the time the repairs were fully completed, more and more people were involved including foreigners from several parts of the world and their own officers and sailors; these people have to be called as witnesses at the trial of plaintiffs' claim and defence to the defendants' counterclaim.

Further, the complexity of the case has seen the necessity of the plaintiffs having to call evidence from many quarters which will undoubtedly involve big expenses.

*The courts decision*

The application of the defendants, as stated in encl 12, was to scale down the security that is now being held by the plaintiffs in the amount of US$7,244,479. Details of this security have been itemized in paras 7 and 8 of the initial supporting affidavit of Khong Fat Yan for the defendants/applicant.

Looking at para 7 of that affidavit, and by the submission of the defendant, it was obvious that only item (a), ie the principal claim, was being disputed. Then, para 8 in turn itemized the principal claim under five heads. Out of these five heads, items (d) and (e) were not disputed. As such, this court will only embark on the examination of the remaining three heads and determine whether they should be reduced or otherwise.

From the lengthy arguments advanced by both parties, it appears to me that the plaintiffs are entitled to security from the defendants regardless of who was responsible for the collision.

It appears that quantum is the only issue that has to be determined in the present application. There seems to be no argument from both parties as to the principle to be applied when the issue of liability is heavily in dispute.

It is obvious that the plaintiffs had imposed their demand for security from the defendants on the strength of their own allegations and assumptions that the defendants were wholly responsible for the collision.

A It seemed to me that the plaintiffs had acted pre-emptively and they were quicker and faster in throwing the blame to the defendants for the collision and taking advantage of the process of law, and thus affecting the arrest on the defendants vessel.

It is to be noted from the pleadings that the defendants did not only
B wholly dispute that they were responsible for the collision, but also averred that such collision was occasioned solely by the negligence of the plaintiffs and/or their agents. As such, a counterclaim has been filed.

With this scenario, a pertinent question that has to be asked is whether it is fair and justifiable for the plaintiffs to assert their demand for security as they did from the defendants. The authorities put to fore by both parties
C do not seem to pick this issue up as a point for discussion and deliberation. However, my view on this matter is that since the issue of liability for the collision has not been adjudicated, the plaintiffs had no right to take the stand and action as though the defendants have been adjudged as the guilty party.

D A request for security that has to be made must be made reasonably, having regard to the circumstances of the incident and merits of the claim. The bottom line is still reasonableness.

In this instant case, after some negotiations and in order to have a quick release of their vessel, the defendants acceded to the plaintiffs' demand for
E security.

They entered into a private agreement with the plaintiffs and provided security for the release of Yick Wing.

Notwithstanding this, the defendants complained to this court now that the security was excessive. The plaintiffs said that following the principle in
F *'The Tribels'* they were entitled to the top level of award which can be inticipated on the basis of their reasonably arguable best case. With respect, learned counsel in applying this principle to the present case has gone off at a tangent. This principle cannot be applied in the instant case for two reasons. Firstly, the facts of *'The Tribels'* are poles apart from the facts of our case here.

G Going by the facts of *'The Tribels'* and that of the present case it is extremely clear that the issues raised in *'The Tribels'* have no bearing whatsoever to the case before us here and is therefore irrelevant. Secondly, in *'The Tribels'*, the liability of the master of *The 'Tribels'* towards the salvors for work done in salvaging the vessel was not at all in dispute. The only issue
H that had to be determined was how much security was reasonable, taking into account the value of the property salved. For the above reasons, I reiterate that the principle in *'The Tribels'* ought not to be considered in relation to the present case.

The defendants contended that the entitlement of the plaintiffs to security was on the basis of their reasonably best arguable case. The
I decisions in *'The Moschantly'*, *'The Polo II'* and *'The H 156'* were the authorities relied upon in support of this proposition. With respect, I am unable to see how the principle in the above cases can be applied to the

present case as there seems to be no resemblance of facts in them. Perusal of the above mentioned three cases will show that the action, of one party against the other was based on their contractual relationship by virtue of contracts that existed between them at that time. The actions for security in those cases were taken on the strength of the terms of the contracts which they alleged to have been agreed upon. In the instant case however, the plaintiffs affected the arrest of the defendants vessel and demanded payment for security for her release solely on the basis of their own belief and assumption that the defendants were the tortfeasors and were guilty in tort against them. In this regards, I must say that the plaintiffs were too presumptuous in their action. As the issue of 'who was right and who was wrong' is yet to be determined in a full trial, I do not think the plaintiffs have the right to cling on to the security furnished by the defendants.

This is more so as the defendants have already submitted to the jurisdiction of this court with regard to the plaintiffs' claim.

As a statement of general principle, a plaintiff may also give bail or other security, either to prevent the arrest of his property or to secure its release, where the defendant has a counterclaim which carries with it a right of arrest.

Coming back to the present case, notwithstanding what I have stated earlier, the decision of the defendants to accede to the plaintiffs' demand is purely a private matter and has nothing to do with the court. This court has been asked to interfere only in respect of the quantum.

In this regard, and in the light of the views that I have expressed earlier on examination of the items, the head of the security has become irrelevant. It would be more appropriate in the circumstances for this court to order that the quantum of the security be reduced to an amount that has been conceded by the defendants in their submission, ie in the lump sum of US$3,802,497.09 which I now do.

*Reduction of security allowed.*

Reported by Moy Saw Han